

TEXACO INC.

IBLA 95-188

Decided February 20, 1997

Appeal from a decision by the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, affirming an order of the Minerals Management Service to recalculate and pay additional royalties on an Indian minerals lease. MMS-92-0652-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982:
Royalties--Indians: Mineral Resources: Oil and Gas:
Royalties--Statute of Limitations

The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1994), for commencement by the United States of civil actions for damages, does not apply to limit administrative action by the Department. An MMS order requiring recalculation and payment of additional royalties on an Indian allottee oil and gas lease is an administrative action that is not covered by that statute of limitations.

2. Federal Oil and Gas Royalty Management Act of 1982:
Royalties--Indians: Mineral Resources: Oil and Gas:
Royalties--Oil and Gas Leases: Royalties: Generally

MMS properly required the lessee of a Federal Indian allottee oil and gas lease to review royalty accounts and to compute and pay additional royalties where an MMS audit demonstrated a systemic underpayment of royalties in 9 test months.

APPEARANCES: Jimmy E. Shamas, Jr., Esq., Denver, Colorado, for appellant; Howard W. Chalker, Esq., Peter J. Schaumburg, Esq., Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Department.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Texaco, Inc., has appealed from the August 5, 1994, decision by the Acting Deputy Commissioner (Commissioner) of Indian Affairs, Bureau of Indian Affairs, affirming an order by the Minerals Management Service (MMS) directing Texaco to recalculate royalties and pay additional royalties on Jicarilla Tribal Lease Contract 34 (AID No. 609-000034-0).

On September 28, 1992, the Area Manager, Houston Compliance Division, MMS, notified Texaco that an audit covering the period October 1, 1983, through September 30, 1989, disclosed that Texaco had underpaid royalties "by at least \$2,302.36 due to not properly reporting and paying royalties on gross proceeds for the sample months November 1984, February 1985, August 1985, January 1986 and July 1986." The audit also revealed that crude oil royalty payments and recoupments for the period March 1984 through September 1984 resulted in zero royalties being paid, and that crude oil volumes for October 1984 were underreported by 1,397.24 barrels.

MMS informed Texaco that there "is a systemic deficiency in Texaco's procedures for reporting and paying royalties" on the above identified lease. To correct the deficiency, Texaco was instructed to determine the proper royalty due for each month of the audit period and to pay any additional royalties due.

On October 28, 1992, Texaco appealed MMS' September 28, 1992, letter, denying that MMS had shown the existence of any systemic errors in its accounting, and asserting that MMS could not compel Texaco to undertake a self-audit. Further, Texaco argued that, as to the audit period occurring more than 6 years prior to its receipt of the September 28, 1992, order, the statute of limitations, 28 U.S.C. § 2415 (1994), also barred the self-audit, and barred MMS from collecting royalties that accrued more than 6 years and 90 days before Texaco received the order.

On August 5, 1994, the Commissioner rejected Texaco's argument concerning the statute of limitations. He also found that MMS properly conducted an audit and issued an appropriate order to ensure payment of all royalties due. The audit demonstrated "17 errors over a 6-year period" (Decision at 6). Texaco was found to have failed to pay royalties based on gross proceeds during 9 sample months between 1984 through 1988. During that period, the total royalty deficiency was \$2,360.24. During 5 other sample months in 1984, volume discrepancies resulted in Texaco's failure to pay \$8,966.73 in royalties. In addition, crude oil volumes for October 1984 were underreported by 1,397.24 barrels, resulting in a royalty deficiency of \$832.23 for that month. The Commissioner stated that these errors warranted a finding of "systemic error" (Decision at 6). On this basis Texaco was properly required to review and correct its royalty payments during the entire audit period. The Commissioner pointed out that Texaco was not being required to perform an audit (an audit had already been performed by MMS) but was being asked to review and correct payments.

In its appeal before this Board, Texaco again argues that the statute of limitations, 28 U.S.C. § 2415(a) (1994), prohibits the collection of royalties accruing more than 6 years and 90 days prior to Texaco's receipt of MMS' September 28, 1992, letter.

Texaco also argues that MMS required it to conduct an impermissible self-audit. Texaco asserts that the responsibility to "audit and reconcile" lease accounts lies with MMS and not the lessee. Moreover, Texaco argues that such action must be based on a "systemic" error, which (it asserts) was not established by MMS' determinations that 17 errors were

discovered over a 6-year period; that no royalties were paid on gross proceeds during 9 sample months; and that volume discrepancies in 1984 resulted in the payment of zero royalties. Texaco argues that these determinations do not constitute "systemic error" because MMS failed to statistically correlate these errors (Statement of Reasons at 22).

Citing previous decisions of this Board, MMS maintains that it properly required Texaco to conduct a "restructured accounting," and that the statute of limitations (28 U.S.C. § 2415(a) (1994)) does not bar the collection of underpaid royalties.

[1] Texaco's arguments were fully addressed in Texaco Exploration & Production Co., 134 IBLA 267 (1995). There, we stated with respect to the statute of limitations:

The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1988), provides that "every action for money damages brought by the United States * * * which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues." We have long ruled that statutes establishing time limitations for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. Chevron U.S.A. Inc., 129 IBLA 151, 154 (1994), and cases cited therein. We have specifically declined to rule that MMS demands for additional royalty are barred by that provision. Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992); Marathon Oil Co., 119 IBLA 345, 352 (1991).

In addition, in a September 7, 1994 order granting rehearing of its opinion in Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994), the court affirmed the District Court's grant of summary judgment to the defendants in two of four consolidated cases challenging MMS' orders to recalculate royalties and pay additional royalties, concluding that the statute of limitations did not bar the agency's action. [Footnote omitted.]

Id. at 270. So it is here.

[2] Texaco correctly observes that the Secretary is required by section 101(c)(1) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1711(c)(1) (1994), to "audit and reconcile to the extent practicable, all current and past lease accounts for leases of oil or gas." See also 30 CFR 217.50. However, it is clear that Congress, in enacting FOGRMA, sought to avoid a royalty accounting and collection system operating entirely on the honor principle, with no verification of production and sales data, since this sort of arrangement had led to underreporting of production and sales in the past. See H.R. Rep. No. 859, 97th Cong., 2d Sess. 15, 16 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 4268-70. The statute required instead that the Secretary

and his delegates were to audit and reconcile lease accounts. However, Congress was also aware that "auditing every account on an annual basis is clearly impractical." H.R. Rep. No. 859, 97th Cong., 2d Sess. 33 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 4287. With this practical consideration in mind, the Secretary was to audit and reconcile accounts only "to the extent practicable." 30 U.S.C. § 1711(c)(1) (1994).

In Texaco Exploration and Production, Inc., *supra* at 269-70, citing BHP Petroleum (America) Inc., 124 IBLA 185, 187-88 (1992), we stated that FOGRMA does not prevent the Secretary from directing a royalty payor to review royalty accounts in order to uncover underpayments traceable to identified defects in the payor's original calculation of royalties due. We also approved MMS' practice of sampling certain leases, or certain production months for certain leases, leaving the payor the burden of uncovering all other instances of systemic deficiency. See also Amoco Production Co., 123 IBLA 278, 281-84 (1992). The results of MMS' audit in the case now before us disclosed reporting errors capable of repetition.

We are aware of no authority requiring MMS to "statistically correlate" such errors as a prerequisite for requiring the lessee to review its accounts. There must, at a minimum, be some evidence of irregularity to justify the type of demand for information that is under attack in this appeal, and that irregularity should be one that is capable of having been repeated. Amoco Production Co., 123 IBLA at 294 (A.J. Hughes, concurring).

However, there is such evidence here. In these circumstances, MMS' order demanding answers was "reasonably necessary" under 30 U.S.C. § 1717(a)(1) (1994).

In Phillips Petroleum v. Lujan, 963 F.2d 1380, 1386 (10th Cir. 1992), the court rejected Phillips' argument that MMS had required it to perform an impermissible "self audit" in contravention of FOGRMA. The court approved MMS' procedure of requiring lessees to correct repeated royalty underpayments caused by systemic deficiencies.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge